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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,888	12/08/2003	Francois Cottard	06028.0036-00	9625
22852	7590	11/21/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/728,888		COTTARD ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Eisa B. Elhilo		1751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/15/2005</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

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Claims 1-83 are pending in this application.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-45, 47, 55-56 and 59-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US 2001/0023514 A1) in view of Grollier et al. (US 4,357,141).

Cottard et al. (US' 514 A1) teaches a composition for oxidation dyeing of hair comprising oxidation bases chosen from para-phenylenediamines of a formula (I) as claimed in claims 1 and 12-15 (see page 6, formula I), double bases of a formula (II) as claimed in claim 16 (see page 6, formula II), para-aminophenols of a formula (III) as claimed in claims 17 (see page 7, formula III), heterocyclic bases as claimed in claim 18 (see page 7, paragraph, 0140), fatty amide (see page 18, paragraph, 0370), wherein the oxidation bases are presented in the claimed amounts as claimed in claims 19-20 (see page 8, paragraph, 0160), couplers chosen from meta-phenylenediamines presented in the claimed amounts as claimed in claims 21-23 (see page 8, paragraphs, 0162 and 0163), acid addition salts of chosen from hydrochlorides and hydrobromides as claimed in claim 24 (see page 8, paragraph, 0164), direct dyes as claimed in claim 25 (see page 8, paragraph, 0164), at least one non-oxyalkylenated fatty alcohols such as lauryl, cetyl and oleyl alcohol in the amount of 0.001 to 20% by weight which overlapped with the claimed amounts as claimed in claims 9-11 (see page 17, paragraph, 0347), at least one

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associative polymer of fatty chain anionic associative polymer, acrylic terpolymer and copolymers as claimed in claims 26-38 and 41-42 (see page 3, paragraphs, 0050-0057 and page 4, paragraphs, 0065-0088 and page 5, paragraphs, 0089-0090), associative polymer is nonionic polymer modified with groups comprising at least one fatty chain as claimed in claim 39 (see page 4, paragraphs, 0077), associative polymer of polyurethane polyethers as claimed in claim 40 (see page 4, paragraph, 0088), wherein the associative polymer is chosen from quaternized cellulose modified with fatty chain as claimed in claims 43-45 (see page 5, paragraphs, 0100-0103), wherein the at least one amphoteric polymer comprises at least one fatty chain having 8 to 30 carbon atoms chosen from alkyl radical (non-cyclic cationic unit) as claimed in claim 47 (see page 5, paragraphs 0102 and 0103), wherein the associative polymer is presented in the amounts of 0.01 to 10% and 0.1 to 5% as claimed in claims 55-56 (see page 5, paragraph, 0108), substantive polymers such as homopolymer of dimethyldiallylammonium chloride as claimed in claims 64-65 (see page 10, paragraph, 0206), substantive polymers in the claimed amounts as claimed in claims 66-70 (see page 12, formulae (W) and (U) and paragraph, 0245), surfactants in the amounts of 0.01 to 40% as claimed in claims 71-73 (see page 17, paragraph, 0339), guar gum thickeners in the amounts of 0.01 to 10% as claimed in claims 74-76 (see page 17, paragraphs, 0340 and 0341), reducing agent in the amounts of 0.05 to 1.5 % as claimed in claim 77 (see page 17, paragraph, 0346), wherein the composition also comprises hydrogen peroxide in the amount of 1 to 40 volumes as an oxidizing agent as claimed in claims 78-81 (see page 17, paragraph, 0349), wherein the composition has a pH in the range of 6-11 as claimed in claim 82 (see page 18, paragraph, 0351). Cottard et al. (US' 514 A1) also teaches a multi-compartment device

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comprising the dyeing composition as described above and as claimed in claims 83 (see page 23, claims 72-86). Cottard et al. (US' 514 A1).

The instant claims differ from the reference by reciting a composition comprising fatty acid amide of an alkanolamine and C14-C30 fatty acid.

However, Cottard et al. (US' 514 A1) teaches and suggests the use of fatty amide in the dyeing composition (see page 18, paragraph, 0370).

Grollier et al. (US' 141) in analogous art of hair dyeing formulation, teaches a composition comprising fatty amides such as oleic diethanolamide and stearic monoethanolamide as claimed in claims 4-6 (see col. 7, lines 24-26) and wherein these amide are presented in the amounts of 1 to 10% by weight which within the claimed range as claimed in claim 7 and overlapped with the claimed range as claimed in claim 8 (see col. 7, lines 28-30).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made, would be motivated to modify the composition of Cottard et al. (US' 514 A1) by incorporating the species of fatty acid amides as taught by Grollier et al. (US' 141) to make such a composition. Such a modification would be obvious because Cottard et al. (514 A1) as a primary reference suggests the use of the genus fatty amide in the composition (see page 18, paragraph, 0370). Grollier et al. (US' 141) as a secondary reference clearly teaches the claimed species of the fatty amides (see col. 7, lines 24-26), and, thus, a person of the ordinary skill in the art would be motivated to incorporate the fatty acid amides as taught by Grollier et al. (US' 141) in the dyeing composition of Cottard et al. (US' 514 A1), because the ordinary artisan would have the reasonable expectation that any of the species of the genus would have similar properties and thus, the same use as the genus as a whole.

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With respect to claims 59-63, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition comprising associative polymers, fatty alcohols and fatty amides with the claimed ratio, because Cottard et al. (US' 514 A1) clearly teaches and disclose the amounts of cationic polymers (see page 12, paragraph, 0245) and the amounts of associative polymers (see page 16, paragraph, 0315). Grollier et al. (US' 141) as a secondary reference teaches the amounts of the claimed species fatty amides and fatty alcohols and wherein the amounts of these dyeing ingredients are within the claimed ranges, and, thus a person of the ordinary skill would expect such a composition to have similar weight ratio between these dyeing ingredients and would expect such a composition to have similar properties to those claimed, absent unexpected results.

2        Claims 46, 48-54 and 57-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US 2001/0023514 A1) in view of Grollier et al. (US' 4,357,141) and further in view of Laurent et al. (US 2002/0046431 A1).

The disclosures of Cottard et al. (US' 514 A1) and Grollier et al. (US' 141) as described above, do not teach or disclose the cationic amphiphilic polyurethane polymers as claimed.

However, the reference clearly suggests the use of associative cationic polymers such as quaternized cellulose in the dyeing composition (see page 5, paragraph, 0099).

Laurent et al. (US' 431 A1) in analogous art of hair dyeing formulation, teaches a composition comprising a cationic polyurethane of a formula (Ia), which is similar to the claimed formula (Ia) as claimed in claims 46 and 57-58 (see page 3, paragraphs, 0096-0105), wherein the monomer comprises 0.1 to 10% by weight as claimed in claim 48 (see page 8, paragraph, 0202), wherein the cationic amphiphilic polyurethane comprises monomers chosen from

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formulae (Ib) and (IIb) as claimed in claim 49 (see page 6, paragraph, 0157), wherein the monomer chosen from a monomer dimethylaminopropyl-methacrylamide and acrylamidopropyltrimethylammonium chloride as claimed in claims 50-51 (see page 7, paragraph, 0191 and page, 18, paragraph, 0402), wherein the monomer chosen from acrylic acid, methacrylic acid as claimed in claim 52 (see page 8, paragraph, 0208) and wherein the monomer chosen from (C<sub>10</sub>-C<sub>30</sub>)alkyl acrylates as claimed in claims 53-54 (see page 8, paragraph, 0211).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Cottard et al. (US' 514 A1) by incorporating the cationic polyurethane as taught by Laurent et al. (US' 431 A1) to make such a composition. Such a modification would be obvious because Cottard et al. (US' 514 A1) as a primary reference clearly suggests the use of cationic polymers in a hair dyeing composition (see page 8, paragraph, 0167). Laurent et al. (US' 431 A1) as a secondary reference clearly teaches the claimed cationic polyurethane polymers as claimed, and, thus, a person of the ordinary skill in the art would be motivated to incorporate these polyurethane polymers as taught by Laurent et al. (US' 431 A1) in the dyeing composition of Cottard et al. (US' 514 A1) with a reasonable expectation of success to arrive the claimed invention and would expect such a composition to have similar properties to those claimed, absent unexpected results.

### ***Conclusion***

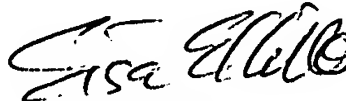
4 The remaining references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Eisa Elhilo  
Primary Examiner  
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November 15, 2005